### **U.S. District Court** Northern District of Ohio (Cleveland) CIVIL DOCKET FOR CASE #: 1:11-ev-00251-SL **Internal Use Only**

Saber Healthcare Group, LLC v. Saber Health Care, LLC et Date Filed: 02/03/2011

Assigned to: Judge Sara Lioi

Cause: 15:1121 Trademark Infringement

Date Terminated: 03/30/2011

Jury Demand: Plaintiff Nature of Suit: 840 Trademark

Jurisdiction: Federal Question

### **Plaintiff**

Saber Healthcare Group, LLC

TM Ry. 1 3,652,235 3,652,238

### represented by Daniel A. Thomson

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V.

### **Defendant**

Saber Health Care, LLC

represented by Paul W. Lombardi

Roetzel & Andress - Akron

### **BACKGROUND OF THE CASE**

### Plaintiff's Use of SABER MARKS

- 5. Plaintiff Saber Healthcare is a business whose primary purpose is owning and operating assisted living facilities, nursing homes, nursing care, psychiatric services, addiction treatment services, home healthcare services, and ambulatory medical care services (collectively, "Healthcare Services").
- 6. Saber Healthcare has been doing business as, and using the mark, "SABER HEALTHCARE," and/or "SABER" in commerce since at least as early as June 1, 2006, to market, sell, and designate its Healthcare Services.
- 7. Saber Healthcare filed federal trademark application No. 77440655 on April 4, 2008, for the stylized mark "SABER" in association with various Healthcare Services; specifically, "providing assisted living facilities" (Class 43) and "nursing homes, nursing care, psychiatric services, addiction treatment services, home healthcare services, ambulatory medical care services" (Class 44). Said trademark application was approved, and issued U.S. Registration No. 3652235, on July 7, 2009 (a true and correct copy of the aforementioned trademark registration is attached as Exhibit A).
- 8. Saber Healthcare filed federal trademark application No. 77440681 on April 4, 2008, for the standard character mark "SABER" in association with various Healthcare Services; specifically, "providing assisted living facilities" (Class 43) and "nursing homes, nursing care, psychiatric services, addiction treatment services, home healthcare services, ambulatory medical care services" (Class 44). Said trademark application was approved, and issued U.S. Registration No. 3652238, on July 7, 2009 (a true and correct copy of the aforementioned trademark

registration is attached as Exhibit B). Federal trademark registrations 3652235 and 3652238 will collectively be referred to as the "SABER MARKS."

- 9. Saber Healthcare has used the SABER MARKS since at least as early as June 1, 2006, and the marks have been continuously used therein in interstate commerce in association with the Healthcare Services offered by Plaintiff.
- 10. Saber Healthcare is also the owner of the uniform resource locator (url) <a href="https://www.saberhealth.com">www.saberhealth.com</a> ("Saber Healthcare Website"), registered on May 15, 2002, which is Saber Healthcare's Website used to market and advertise services in association with the SABER MARKS.
- 11. Plaintiff's SABER MARKS are shown in association with its HealthCare Services on its website, <a href="www.saberhealth.com">www.saberhealth.com</a>, a true and accurate representation of which is attached herein as Exhibit C.
- 12. Upon information and belief, Saber Healthcare's use of its SABER MARKS predate Defendants' use of "Saber Health Care," and other trade names containing the word "SABER," as described *infra*.
- 13. Upon information and belief, Saber Healthcare's Website advertising its services in association with its SABER MARKS predates Defendants' use of "Saber Health Care," and trade names containing the word "SABER," and Defendants' registration and use of <a href="https://www.saberhealthcare.net">www.saberhealthcare.net</a> (and other confusingly similar derivative domain names owned by Defendants; specifically, <a href="https://www.saberfund.com">www.saberfund.com</a> and any other domain name containing the word "SABER" that may be identified during discovery, which are hereby incorporated by reference).

14. Upon information and belief, Saber Healthcare's registration of its url, <a href="https://www.saberhealth.com">www.saberhealth.com</a>, predates Defendants' registration and use of the url www.saberhealthcare.net and <a href="https://www.saberfund.com">www.saberfund.com</a>.

### Defendants' Use of SABER MARKS

- 15. Upon information and belief, Defendants are also in the business of providing assisted living care facilities. Specifically, Defendants advertise on its website (www.saberhealthcare.net) that they have "extensive experience owning and operating regulated and licensed health care and real estate assets." (See Exhibit D; true and correct excerpts from one of Defendants' websites).
- 16. Upon information and belief, on or about November 20, 2009, Defendants or their authorized agents purchased and registered the url for <a href="https://www.saberhealthcare.net">www.saberhealthcare.net</a>.
- 17. Upon information and belief, on or about April 24, 2008, Defendants or their authorized agents purchased and registered the url for www.saberfund.com.
- 18. Upon information and belief, by virtue of Plaintiff Saber Healthcare's prior use of the SABER MARKS and Saber Healthcare Website, Saber Healthcare is the senior user of the SABER MARKS.
- 19. Upon information and belief, Defendants' use of trade names that are confusingly similar to the SABER MARKS is occurring without the authority or permission of Plaintiff Saber Healthcare.
- 20. Upon information and belief, Defendants acquired and own the urls <a href="https://www.saberhealthcare.net">www.saberhealthcare.net</a> and <a href="https://www.saberfund.com">www.saberfund.com</a> without the authority or permission of Plaintiff Saber Healthcare.

- 21. Upon information and belief, Plaintiff discovered Defendants' registration and use of the domain name <a href="www.saberhealthcare.net">www.saberhealthcare.net</a> and <a href="www.saberfund.com">www.saberfund.com</a> in or about November 2010. On December 6, 2010, Plaintiff's counsel forwarded correspondence demanding that Defendants immediately terminate unauthorized use of the SABER MARKS. ("Cease and Desist Letter"; Exhibit E).
- 22. The undersigned counsel contacted Martin Berger, President of Defendant "Saber Health Care, LLC" via telephone on January 5, 2011, after Saber Fund failed to reply by the deadlines included in Plaintiff's Cease and Desist Letter.
- 23. Upon information and belief, although settlement negotiations commenced and appeared to progress towards a final resolution of the dispute, Defendants and Plaintiff have failed to reach an agreement on acceptable settlement terms.
- 24. Upon information and belief, <u>www.saberhealthcare.net</u> and <u>www.saberfund.com</u> are still actively advertising Defendants' confusingly similar services in association with the SABER MARKS.

## FIRST CLAIM FOR RELIEF (Infringement of a Federally Registered Trademark; 15 U.S.C. § 1114(1)(a))

- 25. Saber Healthcare re-alleges and incorporates by reference the allegations contained in Paragraphs 1-14 as if fully rewritten herein.
- 26. This claim is for the infringement of a trademark registered in the United States Patent and Trademark Office, pursuant to Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1)(a), as amended.
- 27. The use by Defendants of the SABER MARKS in association with its healthcare services is an infringement of Plaintiff Saber Healthcare's SABER MARKS (federal trademark

registration numbers 3652235 and 3652238) and is likely to cause confusion, mistake, and/or deception amongst consumers as to the source of origin of Plaintiff Saber Healthcare's services.

- 28. Purchasers are likely to hire Defendants Saber Fund due to Defendants' use of Plaintiff's SABER MARKS believing Defendants are associated, sponsored, or affiliated with Plaintiff, thereby resulting in at least a monetary loss to Plaintiff Saber Healthcare.
- 29. Plaintiff has no control over the quality of the services endorsed and/or advertised by the Defendants, and because of the confusion as to the source engendered by the Defendants conduct, Plaintiff's goodwill in respect to the SABER MARKS is at the mercy of Defendants.
- 30. The use by Defendants of the SABER MARKS has resulted in the dilution of the exclusive rights which Plaintiff formerly enjoyed in connection with the SABER MARKS, to the detriment of Plaintiff Saber Healthcare.
- 31. The Defendants' infringement of the SABER MARKS have been willful and deliberate, and were designed specifically to trade upon the goodwill associated with the SABER MARKS.
- 32. The goodwill of Plaintiff Saber Healthcare's business under the SABER MARKS is of substantial value, and Plaintiff will suffer irreparable harm should infringement be allowed to continue to the detriment of its trade reputation and goodwill.
- 33. Defendants' willful and deliberate acts described above have caused injury and damages to Plaintiff Saber Healthcare, have caused injury to Plaintiff's goodwill and reputation, and, unless enjoined, will cause further irreparable injury, whereby Plaintiff will have no adequate remedy at law.

### SECOND CLAIM FOR RELIEF (False Designation of Origin, Unfair Competition

Under §43(a) of the Lanham Act; 15 U.S.C. § 1125(a))

- 34. Saber Healthcare re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 33 above as if fully rewritten herein.
- 35. Defendants' use of Plaintiff's SABER MARKS constitutes a false designation of origin and unfair competition which is likely to deceive customers and prospective customers into believing that the source of Defendants' services originated with Defendants, and, as a consequence, are likely to divert and have diverted customers away from Saber Healthcare.
- 36. Defendants' use of Plaintiff's SABER MARKS constitutes a false designation of origin and unfair competition which is likely to deceive customers and prospective customers into believing that Defendants' services are affiliated, sponsored, or approved of by Plaintiff Saber Healthcare, and, as a consequence, are likely to divert and have diverted customers away from Saber Healthcare.
- 37. By its unauthorized use of Plaintiff's SABER MARKS, Defendants have falsely designated the origin of its services and has competed unfairly with Plaintiff Saber Healthcare, in violation of 15 U.S.C. § 1125(a).
- 38. Defendants' acts described above have caused injury and damages to Plaintiff Saber Healthcare, have caused injury to Saber Healthcare's goodwill and reputation, and, unless enjoined, will cause further irreparable injury, whereby Saber Healthcare will have no adequate remedy at law.

### THIRD CLAIM FOR RELIEF

### (Violation of Anti-Cybersquatting Consumer Protection Act; 15 U.S.C. § 1125 (d)(1))

- 39. Saber Healthcare re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 38 above as if fully rewritten herein.
- 40. Defendants' urls <u>www.saberhealthcare.net</u> and <u>www.saberfund.com</u> are confusingly similar to Plaintiff's SABER MARKS and url www.saberhealth.com.
- 41. Defendants' urls, <u>www.saberhealthcare.net</u> and <u>www.saberfund.com</u>, have been at all times relevant to this proceeding, dilutive of Plaintiff's SABER MARKS.
- 42. In registering and using the urls <u>www.saberhealthcare.net</u> and <u>www.saberfund.com</u>, Defendants have acted on a bad faith intent to profit from Plaintiff's SABER MARKS, including intent to divert customers from Saber Healthcare's Website to Defendants' websites for commercial gain by creating a likelihood of confusion as to the source, sponsorship, affiliation, endorsement, or origination of the services offered on the sites.
- 43. Defendants' aforesaid acts constitute cybersquatting in violation of 15 U.S.C. § 1125(d)(1), thereby invoking and making available to Plaintiff the remedies provided by 15 U.S.C. §§ 1116 and 1118.

### FOURTH CLAIM FOR RELIEF (Common Law Trademark Infringement)

- 44. Saber Healthcare re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 43 above as if fully rewritten herein.
- 45. Plaintiff Saber Healthcare owns and enjoys rights throughout the United States and globally in and to the SABER MARKS in association with the services provided by Saber

Healthcare, and which are superior to any rights which Defendants may claim in and to said trademarks in any form or style.

- 46. The use by Defendants of Plaintiff's SABER MARKS is likely to cause, and in fact has caused, confusion as to the source of Defendants' goods and services in that purchasers thereof will be likely to associate or have associated such goods and services with and as originating from Defendants, all to the detriment of Saber Healthcare.
- 47. The continuing use by Defendants of Plaintiff's SABER MARKS is likely to cause confusion as to an association, endorsement, or affiliation of Defendants with Plaintiff Saber Healthcare.
- 48. Defendants' willful and deliberate acts described above have caused injury and damages to Saber Healthcare, have caused injury to Saber Healthcare' goodwill and reputation, and, unless enjoined, will cause further irreparable injury, whereby Saber Healthcare will have no adequate remedy at law.

# FIFTH CLAIM FOR RELIEF (Violation of the Ohio Consumer Sales Practices Act, ORC § 1345.01 et seq.; Deceptive Trade Practices)

- 49. Saber Healthcare re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 48 above as if fully rewritten herein.
  - 50. This claim is for deceptive and unfair trade practices under state law.
- 51. The Defendants' conduct, described above, constitutes deceptive trade practices in violation of the Ohio Consumer Sales Practices Act, ORC §1345.01 et seq.; Deceptive Trade Practices.
  - 52. As a result of Defendants' intentional and wrongful acts described above,

consumers have relied on, and will rely on, Defendants' deceptive and unfair practices in purchasing and evaluating Defendants' goods and services, causing irreparable injury to Plaintiff Saber Healthcare' goodwill and reputation and the reputation of the SABER MARKS in a manner that may not be adequately compensated by money damages, and unless enjoined, will cause further injury whereby Saber Healthcare shall have no adequate remedy at law.

### REQUEST FOR RELIEF

WHEREFORE, Plaintiff Saber Healthcare, Group, LLC, prays for judgment as follows:

A. Judgment against Defendants for temporary, preliminary, and permanent injunctions granted pursuant to 15 U.S.C. § 1116, enjoining Defendants and their affiliates, partners, representatives, servants, employees, attorneys and all persons in active concert, privity or participation with, Defendants of and from using the trademark "SABER", and from otherwise infringing Plaintiff's trademarks; from competing unfairly with Plaintiff; from falsely designating the origin of the Defendants' services, from diluting the distinctive quality of Plaintiff's trademarks, from engaging in deceptive trade practices in violation of 15 U.S.C. § 1051 et seq. and the Ohio Consumer Sales Practices Act, ORC §1345.01 et seq.; and from engaging in unfair competition, and further specifically from:

- (i) using in any manner Plaintiff's SABER MARKS, any mark or name confusingly similar to the SABER MARKS, or any other mark which so resembles Plaintiff's SABER MARKS as to be likely to cause confusion, deception or mistake, on or in connection with any goods and/or services;
- (ii) passing off, inducing, or enabling others to offer services or pass off any services as being rendered by Plaintiff, which services are not in fact that of Plaintiff or associated with Plaintiff, under the control, supervision and approval of Plaintiff, or for sale under the marks owned by Plaintiff, or any other mark which so resembles Plaintiff's marks so as to be likely to cause confusion, deception or mistake;

- (iii) committing any acts, including use of the SABER MARKS, calculated to cause purchasers to believe that the services offered by Defendants' are those sold under the control and supervision of Plaintiff, or are sponsored or approved or connected with Plaintiff, are guaranteed by Plaintiff, rendered under the control and supervision of Plaintiff;
- (iv) further diluting and infringing Plaintiff's SABER MARKS and damaging its goodwill;
- (v) selling/offering to sell any goods and/or services under the SABER MARKS, or any other distinctive design or trademark confusingly similar thereto.
- B. Judgment against Defendants pursuant to the power granted the Court under 15 U.S.C. §§ 1117, 1118 that Defendants cease and desist any and all use of the SABER MARKS on its website, including on labels, signs, packages, brochures, advertising matter, receptacles, sale and purchase documents, letterhead, and other material in the possession of Defendants or under Defendants' control which bear the SABER MARKS or any other mark confusingly or substantially similar to Plaintiff's trademarks or which have been used in connection with the advertising, offering for sale, or sale of services bearing said SABER MARKS which are not Plaintiff's or made without the authorization or control of Plaintiff;
- C. Ordering that Defendants be adjudged to have violated Sections 43(a) and 43(c) of the Lanham Act, 15 U.S.C. §§ 1125(a) and 1125(c), and the Ohio Consumer Sales Practices Act, ORC § 1345.01 et seq.
- D. Ordering an accounting of all gains, profits, savings, and advantages realized by Defendants from their aforesaid acts of trademark infringement, cybersquatting and dilution, false designation of origin and unfair competition;
- E. Awarding such damages as Plaintiff shall establish in consequence of Defendants' aforesaid acts of trademark infringement, cybersquatting and dilution, false designation of origin

and unfair competition, together with appropriate interest thereon, including three times the amount found as actual damages by the trier of fact to properly compensate Plaintiff for damages incurred as a result of Defendants' willful infringement, pursuant to 15 U.S.C. § 1117(a);

- F. Ordering Defendants to send letters to clients indicating no association whatsoever to Plaintiff;
- G. Ordering Defendants to deactivate all web sites and deliver up for destruction any and all services, product packaging, promotional materials, advertisements, commercials and other items in the possession, custody or control of Defendants which, if sold, displayed or used, would violate the injunction herein granted;
  - H. Granting Plaintiff the remedies provided by 15 U.S.C. §§ 1116 and 1118.
- I. Awarding Plaintiff punitive and exemplary damages against Defendant and in favor of Plaintiff by reason of Defendants' unfair competition;
  - J. Awarding Plaintiff the costs of this action;
- K. Declaring that this is an exceptional case, pursuant to 15 U.S.C. § 1117, and that Plaintiff be awarded its reasonable attorneys' fees;
- L. Judgment against Defendants indemnifying Plaintiff from any claims brought against Plaintiff for negligence, debts, malpractice, or other breaches of any duty owed by Defendants to any person who was confused as to some association between Plaintiff and Defendants as alleged in this Complaint;
- M. Judgment against Defendants for any and all claims, demands, or causes of action (now or in the future) resulting from Defendants' actions alleged in the Complaint; and
  - N. For such other and further relief as this Court deems just and equitable.

### Respectfully Submitted,

EMERSON THOMSON BENNETT, LLC

Dated: February 1, 2011.

s/Nathan B. Webb

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Attorneys for Plaintiff Saber Healthcare Group,

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### **DEMAND FOR JURY TRIAL**

In accordance with Fed. R. Civ. P. 38(b), Plaintiff, Saber Healthcare Group, LLC, hereby demands a trial by jury on all issues triable by a jury.

| Dated: February 1, 2011 |                            |
|-------------------------|----------------------------|
|                         | EMERSON, THOMSON & BENNETT |
|                         | s/Nathan B. Webb           |

### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

| SABER HEALTHCARE GROUP, LLC       | ) |   |
|-----------------------------------|---|---|
| Plaintiff,                        | ) | Case Number: 1:11-cv-00251                              |
| v. SABER HEALTH CARE, LLC, et al. | ) | Judge: Judge Sara Lioi<br>Mag. Judge: George J. Limbert |
| Defendants.                       | ) |   |

#### STIPULATED CONSENT DECREE

Plaintiff, Saber Healthcare Group, LLC ("Saber Healthcare" or "Plaintiff"), filed this action against Saber Health Care, LLC, Saber Real Estate Advisors, LLC, and Saber Real Estate Capital Partners I, LP, (collectively, "Saber Real Estate" or "Defendants") to protect their intellectual property rights in two federally registered trademarks: U.S. Registration No. 3,652,238, and U.S. Registration No. 3,652,235 (collectively, "Saber Healthcare Group's SABER® marks"). In the Complaint, Plaintiff alleged that by using the trade name "Saber Health Care, LLC," and by purchasing and using the domain name <a href="www.saberhealthcare.net">www.saberhealthcare.net</a>, in association with confusingly similar services—namely, healthcare investment and assisted living ownership and management services—the Defendants had: 1) infringed its federally registered trademarks under 15 U.S.C. § 1114(1)(a); 2) engaged in False Designation of Origin and Unfair Competition Under §43(a) of the Lanham Act; 15 U.S.C. § 1125(a); 3) violated the

Anticybersquatting Consumer Protection Act 15 U.S.C. § 1125(d)(1); 4) infringed its Common Law Trademarks; and 5) engaged in deceptive trade practices and violated the Ohio Consumer Sales Practices Act, ORC § 1345.01 et seq.

As a result of settlement of this action and upon consent of the Plaintiff Saber Healthcare, and the Defendants, Saber Real Estate, it is ORDERED, ADJUDGED, and DECREED that:

- The United States District Court for the Northern District of Ohio has jurisdiction of the subject matter of the present action and personal jurisdiction over Defendants.
- This Stipulated Consent Decree resolves all claims of the Plaintiff against Defendants in
  the Complaint, and all counterclaims that could have been asserted by Defendants against
  Plaintiff, including but not limited to claims of damages, fees, costs, and/or claims in
  equity.
- The terms and provisions of the Stipulated Consent Decree are adequate, fair, reasonable, equitable, and just. The rights of the parties are adequately protected by this Stipulated Consent Decree.
- 4. This Stipulated Consent Decree conforms to the Federal Rules of Civil Procedure, the Lanham Act, the Anticybersquatting Consumer Protection Act, and the Ohio Consumer Protection Act, and is not in derogation of the rights and privileges of any person. The entry of this Stipulated Consent Decree will further the objectives of the Lanham Act, the Anticybersquatting Consumer Protection Act, and the Ohio Consumer Protection Act, and will be in the best interests of the Defendants, the Plaintiff, and the public.

### **INJUNCTION**

- 5. Defendants and any successors in interest recognize and acknowledge Plaintiff's ownership rights in and to the SABER® trademarks (U.S. Registration No. 3,652,238, and U.S. Registration No. 3,625,235) and the goodwill associated therewith. Further, Defendants acknowledge and agree that the SABER® trademarks are valid and enforceable.
- 6. Except as specifically contemplated in the confidential Settlement Agreement entered in this case, Defendants, their owners, stockholders, managers, agents, employees, and any respective successors in interest, are permanently enjoined from any and all use of: (a) trademarks containing Saber Health Care, (b) any mark or name confusingly similar to "SABER," in association with healthcare related services including, but not limited to, their healthcare investment and assisted living ownership and management services and (c) any other mark which so resembles Saber Healthcare Group's SABER® marks as to be likely to cause confusion, deception, or mistake as to the source, sponsorship, or affiliation of Saber Real Estate's services.
- 7. Except as specifically contemplated in the confidential Settlement Agreement entered in this case, Defendants, their owners, stockholders, managers, agents, employees, and any respective successors in interest, are permanently enjoined from using the domain name www.saberhealthcare.net.

8. Saber Real Estate shall immediately change the trade name for their healthcare investment and assisted living ownership and management services business from "Saber Health Care, LLC" to a new trade name which no longer contains the word "SABER" or any mark or name confusingly similar to "SABER".

### RELIEF TO PLAINTIFF

- 9. In accordance with this Stipulated Consent Decree, and the specific terms contemplated in the confidential Settlement Agreement, Defendants shall immediately deactivate the domain name <a href="https://www.saberhealthcare.net">www.saberhealthcare.net</a>, and make arrangements for the transfer of ownership in the domain name <a href="https://www.saberhealthcare.net">www.saberhealthcare.net</a> to Plaintiff. Defendants shall document compliance with this provision within ten (30) days of the transfer or assignment of ownership rights in the domain name <a href="https://www.saberhealthcare.net">www.saberhealthcare.net</a>.
- 10. Defendants, their owners, stockholders, managers, agents, employees, and any respective successors in interest, agree not to hereafter purchase or use domain names that either include "SABER" and "health" or "care" as a portion thereof, or that could conceivably be construed—by virtue of phonetic or spelling similarities—as confusingly similar to "Saber health care".
- 11. Defendants, their owners, stockholders, managers, agents, employees, and any respective successors in interest, shall deliver to Plaintiff any and all documents or materials for which it has knowledge and control—including, but not limited to, labels, signs, packages, brochures, advertising matter, receptacles, sale and purchase documents,

letterhead, and other material in their possession or control—bearing the mark "Saber Health Care" by midnight on June 30, 2011.

- 12. Defendants, their owners, stockholders, managers, agents, employees, and any respective successors in interest, agree not to challenge or contest, directly or indirectly, the validity, ownership, or registration (domestic or foreign) of any of the SABER® trademarks owned by Plaintiff.
- 13. Defendants, their owners, stockholders, managers, agents, employees, and any respective successors in interest, agree not to adopt, use, or seek registration of trademarks or trade names that either include "SABER" and "health" or "care" as a portion thereof, or that could conceivably be construed—by virtue of phonetic or spelling similarities—as confusingly similar to the SABER® trademarks owned by Plaintiff.

### COSTS AND COMPLIANCE

- 14. Each party shall bear its own costs and attorney's fees incurred as a result of this action through the entry of this Stipulated Consent Decree.
- 15. The United States District Court for the Northern District of Ohio shall have continuing jurisdiction over any disputes that may arise between the parties relating to the Stipulated Consent Decree.
- 16. In the event that this Court is required to resolve disputes regarding a party's compliance with the terms of this Stipulated Consent Decree, the prevailing party shall be entitled to

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reimbursement of any court costs, reasonable attorney's fees, or other expenses incurred as a result of the prevailing party's efforts to ensure compliance.

17. Pursuant to the terms of this Consent Decree, Plaintiff's claims against Defendant are hereby dismissed with prejudice.

ENTERED AND ORDERED this 30th of March 2011.

BY THE COURT:

Honorable Sara Lioi

United States District Court Judge

#### APPROVED AND CONSENTED TO:

Saber Healthcare, Group, LLC

s/ Nathan B. Webb

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